

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1356 of 2012 (O&M)
Date of Order: 17.09.2018

Pritam Kaur and others

..Appellants

Versus

Uma Dutt sharma and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate,
for the appellants.

Mr. Saurabh Bajaj, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

C.M.No.13957-C-2018

Prayer in this application is for bringing on record the legal representatives of Pritam Kaur, appellant no.1 and Darshana Rani, appellant no.6.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 2 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

MAIN

Defendants-appellants are in the regular second appeal against the judgments passed by the learned first appellate court.

Plaintiffs filed a suit claiming that originally the property was owned by late Sh. Sriram Sharma, who was owner in possession. He shifted to Delhi and thereafter he handed over the management to one Sh. Ram Sarup. After the death of Sh. Ram Sarup, management of the property was handed over to Sh. Balram, who has appeared as PW1. It was further claimed that property is in a dilapidated condition. It was further claimed that defendants have no concern, although defendants had set up an agreement to sell executed by late Sh. Sriram Sharma on 31.07.1972 and filed a suit, however, fate of the aforesaid suit is not known.

Defendants contested the suit and pleaded that their possession is liable to be protected under Section 53-A of the Transfer of Property Act, 1882. He further claimed that their possession is uninterrupted for 30 years and in any case they have become owner by adverse possession.

Learned trial court dismissed the suit on the ground that date and terms of licence in favour of Sh. Balram, who is plaintiff no.2 have not been proved. In appeal, learned first appellate court has reversed the finding on re-appreciation of evidence. Learned first appellate court has noticed that trial court has wrongly held that ownership of late Sh. Sriram Sharma over the disputed property is not proved. The court noticed that defendants are also claiming property through late Shri Sriram Sharma only on the basis of agreement to sell dated 31.05.1972. The court further found that as per municipal record, owner is late Sh. Sriram Sharma and plaintiff is his son.

The court further found that Ex.P4, form-B under the provisions of Punjab Urban Immovable Property Tax, Rules 1941, also

prove that the property was owned by late Sh. Sriram Sharma.

It is not in dispute that defendants although had pleaded protection of Section 53-A of the Transfer of Property Act, 1882 being in possession in part performance of the agreement to sell, however, did not produce agreement to sell or lead any evidence to prove that there was any agreement to sell.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellants submitted that once late Sh. Sriram Sharma had shifted to Delhi and plaintiffs have failed to prove their possession, therefore, suit for permanent injunction could not be decreed. Learned counsel submitted that the property in dispute is in the shape of residential house and defendants are in possession.

However, on being asked, learned counsel for the defendants-appellants admitted that the defendants have not produced any evidence to prove their possession over the property in dispute. Still further no evidence has been led to prove that it is in the shape of a constructed residential house. In case of vacant piece of land possession follows title.

As regards possession, plaintiff no.2 is Balram was merely as a licensee. Balram who is son of Ram Sarup has appeared in evidence as PW1 has admitted that he is managing the affairs of the property on behalf of plaintiff no.1.

Since defendants also claim that they had purchased the property through agreement to sell from late Sh. Sriram Sharma, therefore title of late Shri Ram Sarup is not in dispute.

Keeping in view the aforesaid facts, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

September 17, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No